



Commonwealth of Virginia
Virginia Information Technologies Agency

GPS DEVICES

Date: August 21, 2006

Contract #: VA-060815-TRIM

Authorized User: Virginia Information Technologies Agency (VITA)
and any Public Body as defined by §2.2-4301 (5) of the *Code of Virginia*
and all Public Bodies as referenced in §2.2-4304 of the *Code of Virginia*

Contractor: Trimble Navigation LTD
10355 Westmoor Drive
Suite 100
Westminster, CO 80021

FIN: 94-2802192

Contact Person: Amber Kidwell
Phone: 720-587-4574
Fax: 720-887-6101
Email: amber_kidwell@trimble.com

Term: August 15, 2006 – August 14, 2007

Payment: Net 30 days

For Additional Information, Please Contact:

Supply Chain Management
Virginia Information Technologies Agency

Greg Searce
Phone: 804-371-5919
E-Mail: Gregory.searce@vita.virginia.gov
Fax: 804-371-5969

NOTES: Individual Commonwealth of Virginia employees are not authorized to purchase equipment or services for their personal use from this Contract.

For updates, please visit our Website at <http://www.vita.virginia.gov/procurement/contracts.cfm>

CONTRACT # VA-060815-TRIM
CONTRACT CHANGE LOG

[illegible]

COMMONWEALTH OF VIRGINIA
VIRGINIA INFORMATION TECHNOLOGIES AGENCY
SUPPLY CHAIN MANAGEMENT DIVISION
110 SOUTH 7TH STREET
RICHMOND, VIRGINIA 23219
IFB 2007-2

INVITATION FOR BIDS
GPS Devices

Issue Date: July 28, 2006

Due Date/Time: August 11, 2006 2:00 p.m.

Procurement Engineer: Greg Searce
Ph No: (804) 371-5919
Fax: (804) 371-5969
E-mail Address: gregory.searce@vita.virginia.gov
Issuing Office: Virginia Information Technologies Agency
110 S. 7th St. Suite 135
Richmond, Va. 23219

Sourcing scope: Available to Virginia state government, localities, and institutions and all public bodies (as defined by § 2.2-4301 and referenced by § 2.2-4304 of the *Code of Virginia*).

NOTE: This public body does not discriminate against faith-based organizations in accordance with the *Code of Virginia*, §2.2-4343.1 or against an Offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

AWARD POSTING: Upon the award or the announcement of the decision to award a Contract as a result of this solicitation, the Supply Chain Management Division (SCM) of the Virginia Information Technologies Agency, will publicly post such notice on the Commonwealth's e-procurement website at www.eva.state.va.us for a minimum of 10 days.

CLARIFICATION OF TERMS: If any prospective Bidder has questions about the specifications or other solicitation documents, the prospective Bidder should contact the Procurement Engineer whose name appears on the face of this solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the Procurement Engineer.

The undersigned offers and agrees to furnish any and all services in accordance with the attached signed bid.

COMPANY NAME: Trimble Navigation, Ltd. DATE: August 3, 2006
ADDRESS: 10355 Westmoor Dr. Suite 100 BY: Amber Kidwell
Signature in ink
NAME: Amber Kidwell
(Print)
TITLE: Inside Sales
CITY/STATE/ZIP: Westminster, Colorado 80021 PHONE NO: 720-587-4574
FEIN NUMBER: 94-2802192 FAX NO: 720-887-6101
COMPANY WEBSITE: www.trimble.com E-MAIL ADDRESS: amber_kidwell@trimble.com
eVA Business-to-Government Registered Vendor partner with Commonwealth of VA? YES X NO

This information below is requested for informational purposes only:

Corporation X Partnership Proprietorship Individual Woman
Owned Small Business owned Minority Owned

VITA Authorized Representative: Robert L. Pappert Date: 8/15/06

Title



COMMONWEALTH *of* VIRGINIA

Lemuel C. Stewart, Jr.
CIO of the Commonwealth
Email: lem.stewart@vita.virginia.gov

VIRGINIA INFORMATION TECHNOLOGIES AGENCY
110 South Seventh Street
Richmond, Virginia 23219
(804) 225-VITA (8482)

Gregory Searce
Supply Chain Management
804-371-5919 Voice

AMENDMENT NO. 2

Reference: Invitation For Bid (IFB)
Issue Date: August 2, 2006
Reference Number: 2007-2
Title: GPS Devices
Issuing Office: Virginia Information Technologies Agency
Supply Chain Management Directorate
110 S. 7th Street, East Lobby
Richmond, Virginia 23219-9300

Reference: Purpose Section

Old Wording:

The Virginia Information Technologies Agency (VITA) desires to establish a statewide term contract to initially acquire approximately 176 mobile data collection hardware, firmware and software units for the Commonwealth of Virginia (COV) and all "Authorized Users". Additional units may be acquired during the life of the contract but there is no guarantee of this.

"Authorized Users" includes any public body as defined by §2.2-4301 (5) of the Code of Virginia, and all other public bodies as referenced in §2.2-4304 of the Code of Virginia, hereinafter referred to as "Authorized Users". The initial order of approximately 176 units will be shipped to the Department of Forestry, Mindia Brown, 900 Natural Resources Drive, Charlottesville, VA 22903.

As an option, based on sections 1 - 4 of the General Requirements, VITA would like bidders to provide on Attachment A (Optional Items tab) pricing for mid and high range models. Providing the middle and high range models is not mandatory. Use of the contract will be optional for COV state agencies, institutions and all other Authorized Users.



COMMONWEALTH of VIRGINIA

Lemuel C. Stewart, Jr.
CIO of the Commonwealth
Email: lein.stewart@vita.virginia.gov

VIRGINIA INFORMATION TECHNOLOGIES AGENCY

110 South Seventh Street
Richmond, Virginia 23219
(804) 225-VITA (8482)

Gregory Secarec
Supply Chain Management
804-371-5919 Voice

AMENDMENT NO. 1

Reference: Invitation For Bid (IFB)
Issue Date: July 28, 2006
Reference Number: 2007-2
Title: GPS Devices
Issuing Office: Virginia Information Technologies Agency
Supply Chain Management Directorate
110 S. 7th Street, East Lobby
Richmond, Virginia 23219-9300

Reference: Bid Opening Time

Bid opening will take place at 3:30pm instead of 2:30pm as noted in eVA. The due date for the bid does NOT change. The due date and time are still August 11, 2006 2:00pm.

A signed acknowledgment of this amendment should be received by the issuing office either prior to the Bid due date and hour, or attached to your Bid. A signature on this amendment does not constitute your signature on the Bid. **The Bid must also be signed.**

Trimble Navigation
Name of Firm

Amber Krawell, Inside Sales
Signature/Title

Aug 3, 2006
Date

Fax: 1-5969



COMMONWEALTH of VIRGINIA

Preston Bryant
Secretary of Natural Resources

Department of Game and Inland Fisheries

Colonel W. Gerald Massengill
Interim Director

August 15, 2006

VITA
ATTN: Mr. Doug Wilson
110 S. 7th Street
Richmond, VA 23219

Subject: Request for Contract Exemption
Toll-free Service

Dear Mr. Wilson:

The Dept. of Game and Inland Fisheries (DGIF) would like to request a contract exemption for very specific toll-free service. The Virginia Tourism Corporation (VTC) began a contract with Hello, Inc. for a toll-free service with the specific number of 866-VABIRDS in 1999 to support distribution of our free Virginia Birding and Wildlife Trail (VBWT) publications. Effective August 2006, VDGIF is reorganizing those publications into one single book for which a fee will be charged. VTC has no mechanism to collect funds for this publication. Therefore, orders placed using this number must be redirected to DGIF. However, Hello, Inc. can not (or will not) release the number to MCI since it is under contract to VTC through at least December 2006.

Our agency would like provide for reimbursement of this to Virginia Tourism Corporation. VTC will continue to handle the shipping of the publications for us, so the reimbursement would be added to our pending contract. Hello, Inc. is happy to forward the existing toll-free number into our call center as long as they retain the number to satisfy their contract with VTC.

Needless to say, since the number has been publicized internationally for five years, DGIF does not wish to give it up at this time unless forced to do so. I appreciate your attention to this request. If you have any questions, or require additional information, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Vicki Krisnitski".

Vicki Krisnitski
IT Project Manager

INSTRUCTIONS TO BIDDERS

VITA encourages the participation of small, minority and women-owned businesses, and encourages prospective Contractors to establish strategic industry relationships with such firms to facilitate the provision of goods or services required by this solicitation.

1. Only Bids from the manufacturer or authorized resellers of the equipment bid shall be considered for award.
2. In order to be considered for selection, Bidders must submit a complete response to this IFB. All sealed bids shall be clearly marked on the outside cover or package with the name of Bidder and the IFB number (2007-2). Bids must be received by the due date and time, at the address listed on the cover sheet, in order to be considered. Any Bids received in the Issuing Office after this time will be rejected.
3. Bids shall be signed by an authorized representative of the bidding company. Failure to submit all information required may result in rejection by the Virginia Information Technologies Agency (VITA). VITA reserves the right to request any information it deems necessary for evaluation.
4. It is the Bidder's responsibility to inquire about and request clarification of any requirement of this IFB that is not clearly understood. All questions must be in writing by e-mail with subject line "Questions on IFB 2007-2" and must be received no later than 2:00 p.m. local time on August 11, 2006. No questions or inquiries will be accepted after this time. All questions must be addressed to the Single Point of Contact (SPOC) listed below:

SPOC: Gregory Scarce

Email: gregory.scarce@vita.virginia.gov

5. Bidder's attention is directed to the cover page, in reference to the providing of company information, including their Federal Identification Number (FEIN).
6. The Commonwealth of Virginia operates an e-procurement web site at <http://www.eva.virginia.gov>. Bidders are encouraged to check this site regularly for any amendments that may be published prior to the bid due date.
7. Bidders are required to register with eVA (www.eva.virginia.gov). Bidder will not receive an award if not registered with eVA prior to award date.
8. Bidders are advised to read and understand the attached Contractual Terms and Conditions which shall be binding upon Contract award.
9. Award(s), if made, will be made to the responsive and responsible Bidder with the lowest "Total Evaluated Price" (Attachment A, Pricing Tab) for the specified unit and all associated accessories listed in "General Requirements, Sections 1 – 4.
10. All pricing shall include shipping FOB Destination and shall include delivery of all manuals and other incidentals necessary for proper operation.
11. VITA, at its sole discretion, *may not accept or consider any proposal from any Bidder who is not current with its Industrial Funding Adjustment (IFA) payments* as of the date of the award.

12. VITA reserves the right to reject any or all bids, in whole or in part, to waive informalities and to delete items prior to making an award or awards, whenever it is deemed in the sole opinion of VITA to be in its best interest.
13. VITA reserves the right to conduct any test it may deem advisable and to make all evaluations necessary to ensure that the products offered will perform in a completely acceptable manner and will meet or exceed the specifications referenced in the solicitation. The time and location of testing and evaluation shall be subject to agreement between VITA and Bidder. The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the bidder to perform the services/furnish the goods and the bidder shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect bidder's physical facilities both prior to and after award to satisfy questions regarding the bidder's capabilities. The Commonwealth further reserves the right to reject any bid/proposal if the evidence submitted by, or investigations of, such bidder fails to satisfy the Commonwealth that such bidder is properly qualified to carry out the obligations of the Contract and to provide the services and/or furnish the goods contemplated therein.
14. The Commonwealth of Virginia cannot award contracts to bidders who are subject to back taxes as pursuant to VPPA Section §2.2-4321.1.
15. The Commonwealth reserves the right to request any bidder to submit information missing from its bid, to clarify the bid and to submit any additional information which the Commonwealth deems necessary in order to evaluate the bidder's offer.
16. Any bid in response to this solicitation shall be valid for 90 days. At the end of the 90 days the bid may be withdrawn at the written request of the Bidder. If the bid is not withdrawn at that time it remains in effect until an award is made or the solicitation is canceled.
17. **Bidder must** submit Attachment A (Pricing Schedule) in both print and CD-Rom form. Please label CD with Bid Number and Company Name.

NEGOTIATION WITH THE LOWEST RESPONSIBLE BIDDER. Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted except that if the bid exceeds available funds, the state may negotiate with the apparent low bidder to obtain a contract price within available funds; however, such negotiation may be undertaken only under conditions and procedures described in writing and approved by the public body prior to issuance of the Invitation to Bid and summarized therein (*Code of Virginia*, § 2.2-4318).

PURPOSE

The Virginia Information Technologies Agency (VITA) desires to establish a statewide term contract to acquire approximately 176 mobile data collection hardware, firmware and software units for the Commonwealth of Virginia (COV) and all “Authorized Users”. The initial purchase will be at least 100 units and this amount will be used in establishing “Total Evaluated Price”. Additional units may be acquired during the life of the contract but there is no guarantee of this. “Authorized Users” includes any public body as defined by §2.2-4301 (5) of the Code of Virginia, and all other public bodies as referenced in §2.2-4304 of the Code of Virginia, hereinafter referred to as “Authorized Users”. The initial order of approximately 176 units will be shipped to the Department of Forestry, Mindia Brown, 900 Natural Resources Drive, Charlottesville, VA 22903.

As an option, based on sections 1 - 4 of the General Requirements, VITA would like bidders to provide on Attachment A (Optional Items tab) pricing for mid and high range models. Providing the middle and high range models is not mandatory. Use of the contract will be optional for COV state agencies, institutions and all other Authorized Users.

Bidders are advised that the Department of Forestry has 67 mapping-grade CMT GPS units (mixture of March IIe and MC-GPS units) that it is willing to trade-in. Bidders are encouraged to fill in an amount in the Pricing Section (Attachment A), however, it is not mandatory.

GENERAL REQUIREMENTS

1. HARDWARE SPECIFICATIONS

- 1.1. Microsoft Windows Mobile Version 5.0 for Pocket PC
- 1.2. Minimum 416 MHZ Processor
- 1.3. Minimum 64MB RAM
- 1.4. Minimum 512MB Flash Data Storage
- 1.5. Sealed Secure Digital (SD) card slot for memory expansion
- 1.6. Internally rechargeable battery with all-day battery life on a single charge
- 1.7. Integrated Bluetooth wireless and 802.11 wireless LAN
- 1.8. Compatibility with USB v. 2.0 computers
- 1.9. Serial communications capable
- 1.10. Minimum 240 x 320 pixel color TFT (thin film transistor) screen for outdoor use
- 1.11. Touch screen interface with soft input panel (SIP) virtual keyboard for data entry
- 1.12. Minimum operational temperature range from 14 degrees F to 122 degrees F
- 1.13. Minimum resistance to wind-driven rain and dust equivalent to IP 54 standard
- 1.14. Shock and Vibration resistant
- 1.15. All products furnished shall be new, unused and in current production.
- 1.16. Contractor shall provide with each piece of equipment a user/operator manual in hard copy format at no charge.
- 1.17. Discontinued or unavailable Contract items: See “Discounted or Unavailable Contract Equipment” section in the Contractual Terms and Conditions.
- 1.18. Replacement parts: See “Replacement Parts” section in the Contractual Terms and Conditions.
- 1.19. Delivery schedule: See “Delivery and Installation” section in the Contractual Terms and Conditions.
- 1.20. Warranty period: See “Limited Warranty and Warranty Services” section in the Contractual Terms and Conditions.
- 1.21. The bid price shall be for complete installation ready for the Authorized User’s use, and shall include all applicable freight and installation charges and the Industrial Funding Adjustment payment. Extra charges will NOT be allowed unless otherwise noted in the associated “Specification and Bid Sheet.”

2. GPS SPECIFICATIONS

- 2.1. The device shall have a fully integrated GPS receiver, internal antenna and user interface.
- 2.2. Minimum of 12 channels
- 2.3. Minimum horizontal accuracy of 1-3 meters (Horizontal RMSE, minimum of 4 satellites and PDOP \leq to 6) with real-time or post-processed differential correction
- 2.4. Real-time differential correction using integrated Wide Area Augmentation System (WAAS)
- 2.5. External antenna support (RTCM 104)
- 2.6. NMEA and TSIP protocol support
- 2.7. Capable of post-processing for differential correction

3. SOFTWARE INCLUDED (Per Device)

- 3.1. Microsoft Streets and Trips
- 3.2. Microsoft ActiveSync, Calculator, File Explorer, Internet Explorer, Pocket Excel, Pocket Outlook, Pocket Word, Windows Media Player
- 3.3. Transcriber (handwriting recognition)
- 3.4. One copy of post-processing software that is compatible with GPS data collected by device

4. ACCESSORIES (Per Device)

- 4.1. USB Data Cable
- 4.2. Power Supply
- 4.3. Vehicle Power Adapter
- 4.4. Carrying Pouch
- 4.5. Stylus

5. TRAINING

- 5.1. Contractor will provide pricing on training as an option on Attachment A (Optional Items Tab) at a per day rate that includes all travel and expenses with no minimum training purchase required. Department of Forestry anticipates needing two days of GPS/device training at the Department of Forestry, located at 900 Natural Resources

Drive, Charlottesville, VA 22903. Please note that the two days of training may not be sequential and could be separated by as much as six (6) months and is not guaranteed to be purchased.

SOLICITATION INSTRUCTIONS

REV. 10/31/05

1. EXPLANATION TO BIDDERS:

It is the Bidder's responsibility to inquire about and request clarification of any requirement of this IFB that is not clearly understood. PRIOR TO SUBMISSION OF A BID, BIDDERS ARE STRONGLY ADVISED TO READ THESE INSTRUCTIONS, REVIEW THE GENERAL REQUIREMENTS AND CONTRACTUAL TERMS AND CONDITIONS, AND CHECK THE DGS/DPS EVA WEB SITE WWW.EVA.VIRGINIA.GOV FOR ANY AMENDMENTS OR CHANGES. THIS SOLICITATION IS SUBJECT TO THE PROVISIONS OF THE VIRGINIA PUBLIC PROCUREMENT ACT (VPPA). Any interpretation required by the Commonwealth will be in the form of an amendment to the solicitation; SEE PARAGRAPH 7 BELOW. Oral explanations or instructions given before the award of the Contract will not be binding.

2. PREPARATION OF SOLICITATION

- A. Bids shall be submitted on the forms furnished, and must bear an original signature by an individual authorized to bind the company submitting the bid. If erasures or other changes appear on the form, each erasure or change must be initialed by the person signing the bid. Telegraphic or facsimile bids will not be considered. Bidders may not submit multiple bids in a single envelope.
- B. Bidder is required to enter its Federal Employer Identification Number [FEIN] in the space provided on the cover sheet. It is the Bidder's responsibility to provide the correct FEIN and to keep VITA updated as to any changes in vendor's status.
- C. The bid form may provide for submission of a price or prices for one or more items. All prices shall be entered in the Pricing Sheet (Attachment A). Where the bid form explicitly requires that the Supplier bid on all items (e.g., an all-or-none requirement), failure to do so will disqualify the bid. When submission of a price on all items is not required, Supplier should insert the words "no bid" in the space provided for any item on which no price is submitted
- D. Modification of bids already submitted will be considered if received at the office designated in the invitation for bids before the time set for opening of bids.

3. SUBMISSION OF BIDS

TO BE CONSIDERED, THE BID MUST BE RECEIVED AT THE ADDRESS GIVEN IN THE SOLICITATION ON OR BEFORE THE DATE AND HOUR DESIGNATED. Bidders must pay particular attention to ensure that the bid is properly addressed. The Commonwealth is not responsible if the bid is not properly addressed. The Commonwealth is not responsible if the bid does not reach the destination specified by the date and time identified on page 1 of the Solicitation. Bids received after the date and hour identified on page 1 of the solicitation are automatically disqualified and will not be considered. All bids must be sealed, addressed to the address shown on page 1 of the Solicitation, and marked on the outside of the bidder's envelope as in the example below. Failure to do so may result in a premature opening of, or a failure to open, the bid.

From:	Name of Bidder	
	Street or Box Number	
	City, State, Zip Code	
	Due Date: August 11, 2006	Time 2:00 pm
	IFB No. 2007-2	

4. LATE BIDS, MODIFICATIONS OF BIDS OR WITHDRAWALS OF BIDS

- A. Any bids received at the office designated as the Issuing Office on page 1 of the Solicitation after the exact time specified for receipt will not be considered for award.

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- B. A bid may be amended and/or withdrawn by a bidder if the office issuing the solicitation receives the request in writing before the date and hour set forth in the bid form. The request must be signed by a person authorized to represent the person or firm that submitted the bid. Submission of a subsequent bid shall normally constitute the withdrawal of any prior bid submitted by the same bidder on the same IFB.

5. PUBLIC OPENING OF BIDS

Bids will be publicly opened at the time and date specified on page 1 of the Solicitation document. Bids will not normally be evaluated at the bid opening meeting. All bids will be opened at the location shown on page 1 of the solicitation.

6. SOLICITATION TERMS AND CONDITIONS

The terms and conditions contained in this solicitation are considered mandatory and are the only terms and conditions governing transactions under any Contract awarded as a result of this solicitation.

If the bidder includes additional terms and conditions on pre-printed marketing sheets, pre-printed catalogues, or other pre-printed materials, then it is understood that those terms and conditions are of no consequence to and will not be included in any resulting Contract.

Any other modification, addition, clarification, or change to the mandatory terms and conditions by the bidder shall cause the bid to be rejected.

TELEPHONIC REQUESTS FOR BID RESULTS WILL NOT BE HONORED.

7. AMENDMENT OF SOLICITATION

Any amendment or change to this solicitation will be issued in writing and will identify the changes to be made in the bid. All amendments will be posted to the DGS/DPS eVA web site (www.eva.virginia.gov).

If the bid opening date is extended, the new date and time will be clearly shown on the face of the amendment.

Bidder is required to sign and return a copy of each amendment with its bid to indicate that it has received the document(s) and is aware of the changes made.

8. ANTI-COLLUSION CERTIFICATION

By Bidder's signature on the face of this bid, Bidder certifies that this bid is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a bid for the same equipment, software, or services, and is in all respects fair and without collusion or fraud. Bidder understands collusive bidding is a violation of the Virginia Governmental Frauds Act and Federal Law and can result in fines, prison sentences, and civil damage awards. Bidder agrees to abide by all conditions of this bid and certifies that he or she is authorized to sign this bid for the bidder's firm.

9. DEMONSTRATIONS

The Commonwealth reserves the right to require the Bidder to demonstrate to the satisfaction of the Commonwealth, that the products offered will perform in a completely acceptable manner and will meet or exceed the specifications referenced in the solicitation. The demonstration site and time is subject to agreement between the Commonwealth and Bidder.

10. CONTRACT

Any Contract which is awarded as a result of this solicitation, offer and award shall be between VITA and the Contractor. No other agency, institution or public body may negotiate in any way with the vendor concerning the items identified in the General Requirements or Pricing Schedule or any terms and conditions of the Contract. All

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problems associated with the resulting Contract shall be brought to the attention of the VITA authorized representative.

Specifications - Any comments or questions concerning the specifications, terms and conditions or any note contained in this solicitation shall be submitted, in writing, to the issuing office.

11. TRADE SECRETS OR PROPRIETARY INFORMATION

Trade secrets or proprietary information submitted by a bidder in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the bidder must invoke the protections of Code of Virginia, Section 2.2-4342, prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reason why protection is necessary. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information. The classification of an entire bid document, line item prices and/or total bid prices as proprietary or trade secrets is not acceptable and will result in rejection of the bid.

12. ALTERNATIVE DISPUTE RESOLUTION

By signing and submitting a bid under this solicitation, the bidder agrees that should it desire to appeal a protest decision of an award resulting from this solicitation, it agrees to submit such appeal to VITA's alternative dispute resolution procedures. Such use of VITA's alternative dispute resolution procedures shall be concurrent with and not in lieu of the bidder's other statutory protest appeals outlined in §§2.2-4364 and 4365 of the Code of Virginia.

13. PROTESTS OF AWARDS

All protests of awards shall be conducted in accordance with the provisions of the VPPA and VITA's Alternative Dispute Resolution procedure.

CONTRACTUAL TERMS and CONDITIONS

SCOPE OF CONTRACT

The following paragraphs contain the contractual terms and conditions which shall govern the sale of *GPS Devices and accessory items* (Hardware or Equipment or Product) and Services identified in this Contract, from the Contractor ("Contractor") identified on the cover page of this Contract. All Hardware includes any software or firmware inherent to its operation. This Contract or Agreement between the Commonwealth of Virginia, hereinafter referred to as "Commonwealth" or "State" or "VITA" (Virginia Information Technologies Agency) and the Contractor is established on the behalf of, and may be used by, Agencies, Institutions, and other public bodies as defined in §2.2-4301 of the Virginia Public Procurement Act ("VPPA"), hereinafter referred to as "Authorized Users".

The functional and technical requirements of the Equipment and Services to be provided by Contractor are described in detail in Invitation for Bids 2007-2.

TERM AND TERMINATION

Contract Term

The initial Term of this Contract shall be from the date of award and continue for one (1) year. The Commonwealth, at its sole discretion, may renew the Contract for four (4) additional one (1) year periods under the terms and conditions of the original contract. Written notice of the Commonwealth's intention to renew will be given approximately 60 days prior to the expiration date of each contract period. All open calls and related documents shall survive the period of performance stated in this section until such time as all open calls (executed prior to the expiration of this Contract) have been completely closed.

Termination for Convenience

This Agreement may be terminated for any reason upon thirty (30) days written notice by VITA. There are no additional financial obligations to the Commonwealth upon termination for convenience.

Termination for Default

The Commonwealth shall have the unilateral right to terminate this Contract for Default, in the event that any one or more of the following events of default occur or continue during the term of this Contract:

(a) Contractor fails to make any Product or Service ready for acceptance testing by the specified delivery date; (b) Contractor repeatedly fails to respond to requests for maintenance or other required service within the time limits set forth in this Agreement; (c) Contractor fails to comply with any other term of this Agreement and fails to cure such noncompliance within ten days (or such greater period as is acceptable to the Commonwealth) following Contractor's receipt of a Show Cause Notice identifying such noncompliance; or (d) Contractor fails to provide a written response to the Commonwealth's Show Cause Notice within ten days after receiving same.

The Contractor shall not be in default of this Agreement if its default was due to causes beyond the reasonable control of, and occurred without any fault or negligence on the part of, both the

Contractor and its subcontractors. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Commonwealth in either its sovereign or Contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather.

In the event of Contractor's default, in addition to any other remedies provided by law, the Commonwealth may cancel its obligations with respect to any or all unaccepted Products or Services. All costs for de-installation and return of Products shall be borne by the Contractor. In no event shall any failure by the Commonwealth to exercise any remedy available to it be construed as a waiver of or consent to Contractor's default.

SOFTWARE LICENSE

Term of License

For any software/firmware that is included in any Equipment supplied by the Contractor, the license(s) are supplied on a non-exclusive, irrevocable perpetual license basis and shall continue in perpetuity until canceled by the Authorized User or unless terminated in accordance with the provisions of this Contract. Notwithstanding the foregoing, the Authorized User may terminate the license at any time. All licenses granted to the Authorized User are for the use of the software/firmware product at such Authorized User's computing facilities (sites) and on the Equipment or for the purpose identified in the Contract. This license is perpetual and in no event shall Contractor's remedies for any breach of this Agreement include the right to terminate any license or support services hereunder.

Commonwealth's Rights to Software/Firmware

Notwithstanding anything to the contrary in this Agreement, Authorized Users shall have:

- a. Unlimited use of the software/firmware on the equipment for which it is acquired and any future upgrades of such equipment;
- b. Use of such software/firmware with a backup system if the system(s) for which or with which it was acquired is for any reason inoperative, or during an emergency, or the performance of engineering changes or changes in features or model;
- c. The right to use such software/firmware at any of Authorized User's installation to which the equipment may be transferred by the Authorized User;
- d. The right to copy such software/firmware for safekeeping or backup purposes.

No Subsequent, Unilateral Modification of Terms by Supplier ("Shrink Wrap")

Notwithstanding any other provision or other unilateral license terms which may be issued by Contractor after the Effective Date of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of an order for products or services provided hereunder, the components of which are licensed under this Contract, or the fact that such other agreement may be affixed to or accompany Software upon delivery ("shrink wrap"), the terms and conditions set forth herein shall supersede and govern licensing and delivery of all products and services hereunder.

RIGHTS TO WORK PRODUCT

The Contractor is prohibited from copyrighting any papers, reports, forms or other materials, and from obtaining any patent on any invention or other discovery resulting solely from its performance under the terms and conditions of this Contract.

FEES, ORDERING AND PAYMENT PROCEDURE

Supplies

Authorized charges do not include operational supplies (e.g. paper, tape, etc.) unless such supplies are specifically identified in the Pricing Schedule. All supplies used by the State shall conform to the Contractor's published specifications provided to State at time of equipment installation. The State reserves the right to acquire such supplies from any Contractor of its choice.

Purchase Price and Price Protection

Prices for Products and Services shall not increase for a period of not less than two (2) years from the effective date of this Contract. Thereafter, any increase in price shall be limited to once per twelve (12) month period and shall not exceed the lesser of 3% or the annual increase in the Consumer Price Index for All Urban Consumers (CPI-U), Not Seasonally adjusted, U.S. city average, all items less food, as published by the Bureau of Labor Statistics of the Department of Labor (<http://www.bls.gov/>), for the effective date of the increase compared with the same index one (1) year prior. Contractor shall demonstrate the added value for any requested price increase. Any change in price shall be submitted to VITA in writing in accordance with the above and shall not become effective for sixty (60) days thereafter. Semi-annually the prices for Products and Services may be checked against CPI-U, as defined above, and the prices shall be appropriately reduced to ensure continued price competitiveness, if required.

Ordering

Contractor is required to accept any order placed through the eVA electronic procurement website portal (<http://www.eva.state.va.us>). eVA is the Commonwealth of Virginia's total electronic procurement solution. State agencies, as defined in §2.2-2006 of the Code of Virginia, shall order through eVA. All other Authorized Users are encouraged to order through eVA, but may order through the following means:

- i). Purchase Order (PO): An official PO form issued by an Authorized User.
- ii). Any order/payment transaction processed through the Commonwealth of Virginia's contract with MasterCard (MC). Each order must not exceed \$5,000, or the then-current charge card limit.
- iii). Any other order/payment charge or credit card process, such as AMEX, MASTERCARD, or VISA under contract for use by an Authorized User.

This ordering authority is limited to issuing orders for the Equipment and Services available under this Contract. Under no circumstances shall any Authorized User have the authority to modify this Contract.

Invoice Procedures

All invoices shall be rendered promptly after all Equipment covered by the invoice has been accepted. Invoices for Equipment maintenance or Extended Warranty (see Pricing Schedule) shall be paid as set forth in the Pricing Schedule. No invoice may include any costs other than those identified in the Pricing Schedule. Invoices shall provide at a minimum:

1. Type and description of the equipment or service;
2. Serial number, if any;
3. Charge for each item;
4. This Contract Number, and;
5. Contractor's Federal Employer Identification Number (FEIN)

Non-Appropriation

All payment obligations under this Contract are subject to the availability of legislative appropriations at the federal, state, or local level, for this purpose. In the event of non-appropriation of funds, irrespective of the source of funds, for the items under this Contract, VITA may terminate this Contract, in whole or in part, or any order, in whole or in part, or an Authorized User may terminate an order, in whole or in part, for those goods or services for which funds have not been appropriated. Written notice will be provided to the Contractor as soon as possible after legislative action is completed. Termination for lack of appropriations shall not affect any perpetual license granted to an Authorized User pursuant to this Contract, provided such Authorized User has already paid all fees for such license.

Supplier's Report of Sales and Industrial Funding Adjustment

By the 10th day of every month, the Supplier shall submit the "Supplier Monthly Report of Sales". A template showing the format in which the report is to be submitted is available at <http://www.vita.virginia.gov/procurement/supplierResources.cfm>. The report shall be submitted via electronic mail to the VITA IFA Coordinator and the VITA Controller (contact information provided below), and shall report all invoices submitted by Supplier pursuant to the Contract to all Authorized Users during the preceding month. The report shall also show a cumulative record of all invoices submitted to all Authorized Users pursuant to the Contract.

The Supplier shall submit the Industrial Funding Adjustment (IFA) payment for the period covered by such "Supplier Monthly Report of Sales" within thirty (30) days of submitting the "Supplier Monthly Report of Sales". The IFA payment shall be submitted in the form of a check or electronic funds disbursement made payable to the Treasurer of Virginia. The IFA payment is equal to two percent (2%) of total sales under this Contract during the relevant month, as determined by the amount invoiced to Authorized Users. The IFA payment shall reference this Contract number, "report amounts", and "report period".

Supplier shall remit IFA payments made via check to VITA, Attention VITA Controller. Supplier shall also provide a copy of the IFA payment to the VITA IFA Coordinator via email or

fax. Failure to comply with reporting and payment requirements of this section may result in default of Contract.

Contact Information

VITA Controller 110 South 7 th Street, 3 rd Floor Richmond, VA 23219-3931 VITAController@vita.virginia.gov	VITA IFA Coordinator 110 South 7 th Street, 1 st Floor Richmond, VA 23219 804-371-5980 (Phone) 804-371-5969 (Fax) ifacoordinator@vita.virginia.gov
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Small, Woman, and Minority-Owned Business (SWAM) Subcontracting Report

By the 10th day of every month, Supplier shall submit to VITA the Small, Woman, and Minority Owned Business (SWAM) Subcontracting Monthly Report (template available at <http://www.vita.virginia.gov/procurement/supplierResources.cfm>). Supplier's report should include spend on all Supplier's contracts with second-tier suppliers which provide products or services under this Contract. The report should specify the amount of such spend provided to SWAM vendors, by SWAM category, regardless of such SWAM vendors' certification status. Supplier shall submit the report to SWAM@vita.virginia.gov.

DELIVERY AND INSTALLATION

Transportation and Packaging

All contract prices are FOB Destination. All shipments to the Authorized User's site(s) shall be made at the Contractor's expense. The Contractor shall make all arrangements for transportation and shall notify the Authorized User upon shipment. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.

Delivery and Installation

a. Delivery of all requested contract items shall be made within 30 calendar days after receipt of a valid purchase order referencing any contract awarded as a result of this solicitation. State your earliest firm delivery date as follows: Days After Receipt of Order (ARO).

b. If an amendment by VITA to this Contract or any part thereof, requires the establishment of a new required delivery schedule, such delivery schedule shall be mutually agreed upon by VITA and the Contractor. If a change by an Authorized User to an order issued hereunder requires the establishment of a new required delivery date, such delivery date shall be mutually agreed upon by Authorized User and the Contractor. VITA or any Authorized User may delay the installation date by notifying the Contractor at least ten (10) days before the required installation date.

c. If the initial order of Equipment, as described in the "Purpose" section of the solicitation, is not delivered within the time specified herein, the Commonwealth reserves the right to cancel the award of this Contract and/or terminate this Contract for default without further obligation, and award the solicitation to the next responsive and responsible bidder.

d. Neither the Contractor nor the Authorized User shall be responsible for delays resulting from acts beyond the control of each party. These include, but are not limited to, acts of God, riots, acts of war, fire, earthquakes, epidemics, or disasters.

New Equipment and Substitute Equipment

Unless otherwise requested in the specifications, all equipment furnished under this Contract shall be new and in current production.

During the term of this Contract, the Contractor is not authorized to substitute any item for that Equipment identified in the Pricing Schedule without the written permission of the VITA contract manager. Violation of this condition shall be considered grounds for termination of the Contract.

Discontinued or Unavailable Equipment

If a Contract item is discontinued or otherwise unavailable, Contractor shall offer a comparable model, approved by the designated VITA Contract Manager as being materially equivalent in capabilities, features, functions, and physical dimensions, at a price not to exceed that of the discontinued or unavailable model prior to discontinuation.

Field Modifications and/or Engineering Changes

Contractor-sponsored modifications and/or engineering changes shall be made with the consent of the Authorized User at no additional charge for a period of one (1) year from the date of installation. The Authorized User reserves the right at all times to schedule these Contractor-sponsored modifications and/or changes to minimize the impact on the daily operations of the Authorized User.

Failure to Deliver

In the event the Contractor fails for any reason to deliver in a timely manner or according to Contract terms the items set forth in the Pricing Schedule, VITA or the Authorized User, at its own discretion, may give Contractor written notice of such breach. Once notice by VITA the Authorized User is sent or given, VITA or the Authorized User may immediately procure the items from another source. Once VITA or the Authorized User has effected a purchase from an alternate source (in accordance with the Virginia Public Procurement Act) VITA or the Authorized User may charge-back Contractor, in which case Contractor agrees to reimburse VITA or the Authorized User for any difference in cost between the original Contract price and the costs incurred by VITA or the Authorized User to cover from the alternate source. In no event shall VITA or the Authorized User be held to pay Contractor any costs incurred by Contractor, including but not limited to ordering, marketing, manufacturing, or delivering the item(s) which are subject of the notice of breach. This remedy is in addition to and not in lieu of any other remedy the Authorized User or VITA may have under this Contract and the laws of the Commonwealth of Virginia.

Replacement Parts

Contractor shall make available new or like new replacement parts for repair of all Equipment purchased pursuant to this Contract. All parts for the equipment furnished must be available for a period of at least five (5) years from the date of Contract expiration or termination. All parts used

in the repair of the equipment furnished under this Contract must be the exact replacement part specified and supplied by the manufacturer. Any exception necessary because of part unavailability or other unusual situation must have prior approval of the user. It is preferred that new or approved replacement parts be available for all Equipment for at least five (5) years from the date such equipment becomes outdated, obsolete, discontinued or superseded.

ACCEPTANCE

Acceptance, Testing and Compliance with Specifications

All materials, Equipment and Services are subject to inspection and testing by the Authorized User and any that does not meet or exceed the specifications or other requirements of the Contract may be rejected. The Authorized User shall be given thirty (30) days after delivery to test, evaluate and accept the materials, Equipment and Services delivered or furnished under this Contract (provided that the Authorized User, in its sole discretion, may Accept the same prior to expiration of the thirty (30) day period). If the Contractor's materials, Equipment or Services fail to meet the Contract specifications or other requirements, including the specifications of the brand name, or those required by the Contractor's own technical documentation, then the same may be rejected and returned to the Contractor. The Authorized User may require a replacement to be provided or may avail itself of the remedies for default.

Acceptance shall be effective for the purpose of determining title to that which is delivered and for making payment, however, acceptance by the Authorized User following testing and evaluation during the thirty (30) day period shall not be conclusive that the materials, Equipment or Services conform in all respects to the Contract specifications and other requirements. In the event that nonconformance therewith is discovered by the Authorized User after acceptance, whether due to a latent defect or otherwise, the Contractor shall take whatever action is necessary to conform the materials, Equipment or Services to the Contract specifications and other requirements, including but not limited to modification or replacement of the same. The Contractor's failure to do so shall constitute breach of Contract for which the Commonwealth may exercise the remedies provided in the section herein entitled "Termination for Default," in addition to and not in lieu of any other remedies available under Virginia law.

Title

Clear and unrestricted title to all Equipment, other than software/firmware, purchased under this Contract shall pass to the Authorized User upon Acceptance.

Risk of Loss or Damage

The Contractor shall bear all risk of loss or damage to the Equipment until inside delivery to the Authorized User. Such delivery shall be documented by means of a receipt signed by the Authorized User's designated representative. The Contractor is responsible for loss or damage to the Equipment from the time of inside delivery through the time of Acceptance by the Authorized User only to the extent that such loss or damage is caused by Contractor's acts, omissions, or negligence.

PRIME CONTRACTOR RESPONSIBILITY

If the Contractor's offering includes any goods or services to be supplied by another party, the Contractor agrees as follows:

- a. The Contractor shall act as prime contractor and shall be the sole point of contact with regard to all obligations under this Agreement. The prime contractor shall be responsible for the acts and/or omissions of any subcontractor providing goods and services pursuant to this Contract.

and

- b. The Contractor hereby represents and warrants that the Contractor has made such other party aware of the proposed use and disposition of the other party's products or services, and that such other party has agreed in writing that it has no objection thereto.

GENERAL WARRANTY

Software/Firmware

For any software/firmware that is included in any Equipment supplied by the Contractor, the Contractor represents and warrants that it is the sole owner of the software/firmware product or, if not the owner, has received all proper authorizations from the owner to license the software/firmware product, and has the full right and power to grant the rights contained in this Contract. Contractor further warrants and represents that the software/firmware product is of original development, and that, to the best of its knowledge, the package and its use will not violate or infringe upon any patent, copyright, trade secret or other property right of any other person or entity.

Limited Warranty and Warranty Services

At a minimum, the Contractor shall provide a warranty/maintenance on all products for a period of one (1) year or the manufacturer's Warranty length, whichever is greater, at no cost to the Authorized User. Warranty shall begin on date of Acceptance by the Authorized User. The Contractor shall repair or replace all equipment returned for repair within fourteen (14) days of receipt. During the repair period, Contractor will provide Authorized User with loaner units if needed.

Contractor shall provide depot warranty services (labor and parts) for a period of not less than twelve (12) months or such greater period as may be provided by the manufacturer's warranty, beginning on the date of acceptance, at no cost to the State. Contractor shall act as sole point of contact for all units repaired under warranty. The Authorized User shall send the Equipment to the Contractor, postage paid, and the Contractor shall repair or replace the Equipment and return it to the Authorized User, postage paid, within fourteen (14) days of receipt.

All parts used under this agreement shall be new and unused. Parts which have been replaced shall become the property of the Contractor.

Malicious Code

Contractor warrants that, to the best of its knowledge, there are no computer viruses or undocumented features in the equipment, software, or firmware at the time of delivery to an Authorized User; and the equipment, software, or firmware does not contain any embedded device or code (e.g., time bomb) that is intended to obstruct or prevent any Authorized User's use of the equipment. Notwithstanding any rights granted under this Contract or at law, Contractor hereby waives under any and all circumstances any right it may have or may hereafter have to exercise Electronic Self-Help. Contractor agrees that an Authorized User may pursue all remedies provided under law in the event of a breach or threatened breach of this Section, including injunctive or other equitable relief.

PRICE PROTECTION AND MOST FAVORED CUSTOMER

The Commonwealth shall not pay any costs above those specified in this Agreement or set forth on any Order or Attachment referencing this Agreement. Contractor agrees and warrants that for all products and services pursuant to this Contract, the prices are, and will continue to be at or below any prices offered to any "Authorized User" as defined herein.

The Contractor further agrees as follows:

- a. If for any reason, during the term of this Agreement, and any renewals thereof, the Contractor enters into an Agreement with any Authorized User, for the same products or services offered under this Agreement which results in a price less than that provided under this Agreement, the Commonwealth shall receive an equivalent reduction in price for such products and services delivered to all Authorized Users under this Agreement from the date that the Contractor provided the lower price to the Authorized User.
- b. In the event the Commonwealth becomes aware of an Authorized User, who has received such lower prices, during the Term of this Agreement, VITA will notify the Contractor of such prices for such products and elect to make the more favorable prices applicable to the Commonwealth from the date those prices were available to the Authorized User.
- c. During the contract period, if the Contractor offers promotional discounts to any Authorized User or to agencies in a state that is similar in size to Virginia, then the promotional discounts shall be made available to all Authorized Users.
- d. During the contract period, if the Contractor offers promotional discounts as a general practice or offers educational discounts to schools and institutions of higher education in the State of Virginia or states similar in size for items under this Contract, with the result that those prices are lower than the prices available under this Contract, then the promotional discounts shall be made available to all schools and institutions of higher education eligible to place orders against this Contract.
- e. The effective date for price changes/discounts will be the date that the lower prices/discount are made available to the Contractor's customers generally or to schools and institutions of higher education as applicable.

- f. If the Contractor does not sell to an Authorized User at the lower prices/discounts as required above, it shall owe a rebate to each affected Authorized User which is equal to the amount of the overcharge. Said rebate shall be made within 30 days after the Authorized User requests the rebate.

PROPRIETARY INFORMATION, DUPLICATION AND DISCLOSURE

The Contractor acknowledges that in the course of performing services hereunder its personnel and subcontractors (if any) may have access to confidential information about the Commonwealth's business, operations, employees, or customers. Contractor agrees that, except as directed by the Commonwealth, Contractor, its employees and its subcontractors shall not at any time during or after the term of this Agreement (a) disclose any Confidential Information to any third party, (b) permit any third party to examine and/or make copies of any reports, documents or electronic data containing Confidential Information (whether they are prepared by Contractor or come into Contractor's possession or under Contractor's control by reason of Contractor's services) or (c) use any Confidential Information for any reason other than in the performance of services hereunder. Upon termination of this Agreement, Contractor shall return to the Commonwealth or at the Commonwealth's request destroy, all reports, documents, electronic data and other matter in Contractor's possession or under Contractor's control that contain or relate to Confidential Information. Contractor may disclose Confidential Information to such of its personnel as have a need therefore in the performance of their duties for the Commonwealth, provided, however, that Contractor shall inform all such personnel of their confidentiality obligations hereunder and shall use its absolute best efforts to ensure their compliance therewith. Contractor shall not be required to treat as confidential any information which:

- (a) contractor can demonstrate was in its possession prior to execution of this Agreement
- (b) has become generally available in the public domain without breach of this Agreement
- (c) becomes lawfully available to Contractor from a source other than the Commonwealth

The term "Confidential Information" shall not include information that is: (i) in the public domain through no fault of the receiving party or of any other person or entity that is similarly contractually or otherwise obligated; (ii) obtained independently from a third-party without an obligation of confidentiality to the disclosing party and without breach of this Contract; (iii) developed independently by the receiving party without reference to the Confidential Information of the other party; or (iv) required to be disclosed under The Virginia Freedom of Information Act (§§2.2-3700 et seq. of the Code of Virginia) or similar laws or pursuant to a court order.

ANY RELEASE OF PROPRIETARY OR CONFIDENTIAL INFORMATION BY THE CONTRACTOR OR CONTRACTOR'S EMPLOYEES SHALL BE CONSIDERED A BREACH OF THIS AGREEMENT. THE CONTRACTOR SHALL NOT USE THE CONFIDENTIAL INFORMATION OF THE COMMONWEALTH FOR ITS OWN BENEFIT OR FOR THE BENEFIT OF ANY THIRD PARTY. THE PROVISIONS OF THIS SECTION SHALL SURVIVE ANY TERMINATION OF THIS AGREEMENT IN PERPETUITY.

LIABILITY AND INDEMNIFICATION

Contractor agrees to indemnify, defend and hold harmless VITA, any Authorized User, their officers, directors, agents and employees (“Commonwealth’s Indemnified Parties”) from and against any and all third party claims, demands, proceedings, suits and actions, including any related liabilities, obligations, losses, damages, fines, judgments, settlements, expenses (including attorneys’ and accountants’ fees and disbursements) and costs (each, a “Claim” and collectively, “Claims”), incurred by, borne by or asserted against any of Commonwealth’s Indemnified Parties to the extent such Claims in any way relate to, arise out of or result from: (i) any intentional or willful conduct or negligence of any employee or subcontractor of Contractor, (ii) any act or omission of any employee or subcontractor of Contractor (iii) breach of any representation, warranty or covenant of Contractor contained herein, (iv) any defect in the Product or Services, or (v) any actual or alleged infringement or misappropriation of any third party’s intellectual property rights by any of the Product or Services. Selection and approval of counsel and approval of any settlement shall be accomplished in accordance with all applicable laws, rules and regulations. For state agencies the applicable laws include §§ 2.2-510 and 2.2-514 of the Code of Virginia. In all cases the selection and approval of counsel and approval of any settlement shall be satisfactory to VITA or the Authorized User against whom the claim has been asserted.

In the event of a Claim pursuant to any actual or alleged infringement or misappropriation of any third party’s intellectual property rights by any of the Product or Services, and in addition to all other obligations of Contractor in this Section, Contractor shall at its expense, either (a) procure for all Authorized Users the right to continue use of such infringing Product or Services, or any component thereof; or (b) replace or modify such infringing Product or Services, or any component thereof, with non-infringing Products or Services satisfactory to VITA. And in addition, Contractor shall provide any Authorized User with a comparable temporary replacement Product or reimburse VITA or any Authorized User for the reasonable costs incurred by VITA or such Authorized User in obtaining an alternative product in the event such Authorized User cannot use the affected Product. If Contractor cannot accomplish any of the foregoing within a reasonable time and at commercially reasonable rates, then Contractor shall accept the return of the infringing component of the Product or Services, along with any other components of any products rendered unusable by any Authorized User as a result of the infringing component, and refund the price paid to Contractor for such components, less one half (1/2%) percent of the total paid for each month of use by the Authorized User.

EXCEPT WITH REGARD TO CLAIMS FOR PROPERTY DAMAGE, PERSONAL INJURY OR INFRINGEMENT, AND THE INDEMNIFICATION AND CONFIDENTIALITY OBLIGATIONS, WITH RESPECT TO EACH OF WHICH LIABILITY SHALL NOT BE LIMITED PURSUANT TO THIS SECTION, IN NO EVENT WILL ANY PARTY BE LIABLE TO ANY OTHER PARTY (OR THE INDEMNIFIED PARTIES OF SUCH PARTY) FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING (WITHOUT LIMITATION) LOSS OF PROFIT, INCOME OR SAVINGS,

EVEN IF ADVISED OF THE POSSIBILITY THEREOF, EXCEPT WHEN SUCH DAMAGES ARE CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE PARTY, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS.

CONTRACTOR ACCESS TO AUTHORIZED USER LOCATION/S

The Authorized User shall grant to Contractor personnel such access to the Authorized User's location as may be necessary or appropriate for Contractor to perform its obligations under this Agreement, subject to all security issues. For any individual location, the Contractor may be required to undergo additional security procedures that may include but not be limited to; records verification, submission of photos and or fingerprints, etc. The Contractor may at any time, for any Authorized User location, be required to undertake the execution and completion for each individual employee, the requirement of the submission of additional forms that the Authorized User would consider reasonable for security measures. These forms may include the individual employee's agreement that all Authorized User information that is garnered while at the User's site is confidential and proprietary. Any unauthorized release of proprietary information by the Contractor or Contractor's employees shall constitute a breach of this Agreement.

BANKRUPTCY

If Contractor becomes insolvent, takes any step leading to its cessation as a going concern, or ceases business operations for any reason and other than assignment as allowed by this Contract, then VITA may immediately terminate this Contract on notice to Contractor unless Contractor immediately gives VITA adequate assurance of the future performance of this Contract.

GENERAL

Relationship Between VITA and Contractor

Contractor has no authority to contract for VITA or in any way to bind or to commit VITA to any agreement of any kind or to assume any liabilities of any nature in the name of or on behalf of VITA. Under no circumstances shall Contractor, or any of its employees, hold itself out as or be considered an agent or an employee of VITA, and VITA shall have no duty to provide or maintain any insurance or other employee benefits on behalf of Contractor or its employees. Contractor represents and warrants that it is an independent contractor for purposes of federal, state and local employment taxes and agrees that VITA is not responsible to collect or withhold any federal, state or local employment taxes, including, but not limited to, income tax withholding and social security contributions, for Contractor. Any and all taxes, interest or penalties, including, but not limited to, any federal, state or local withholding or employment taxes, imposed, assessed or levied as a result of this Contract shall be paid or withheld by Contractor or, if assessed against and paid by VITA, shall be reimbursed by Contractor upon demand by VITA.

Incorporated Contractual Provisions

The contractual provisions at the following URL are statutorily mandated provisions that are hereby incorporated by reference:

<http://www.vita.virginia.gov/procurement/documents/StatutorilyMandatedTsandCs.pdf>

The contractual claims provision §2.2-4363 of the Code of Virginia and the required eVA provisions at <http://www.vita.virginia.gov/procurement/documents/eVATsandCs.pdf> are also incorporated by reference.

The terms and conditions in documents posted to the aforereferenced URLs are subject to change pursuant to action by the legislature of the Commonwealth of Virginia or the adoption of revised eVA business requirements. If a change is made to the terms and conditions, a new effective date will be noted in the document title. Contractor is advised to check the URLs periodically.

Governing Law

This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without regard to that body of law controlling choice of law. Any and all litigation shall be brought in the circuit courts of the Commonwealth of Virginia. The English language version of this Contract prevails when interpreting this Contract. The United Nations Convention on Contracts for the International Sale of Goods and all other laws and international treaties or conventions relating to the sale of goods are expressly disclaimed. UCITA shall apply to this Contract only to the extent required by §59.1-501.15 of the Code of Virginia.

Dispute Resolution

In accordance with §2.2-4363 of the Code of Virginia, Contractual claims, whether for money or other relief, shall be submitted in writing to the public body from whom the relief is sought no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file such claim must be given to VITA at the time of the occurrence or beginning of the work upon which the claim is based. Pendency of claims shall not delay payment of amounts agreed due in the final payment. The purchasing agency shall render a final decision in writing within thirty (30) days after its receipt of the Contractor's written claim.

The Contractor may not invoke any available administrative procedure under §2.2-4365 of the Code of Virginia nor institute legal action prior to receipt of the purchasing agency's decision on the claim, unless that agency fails to render its decision within thirty (30) days. The decision of the purchasing agency shall be final and conclusive unless the Contractor, within six (6) months of the date of the final decision on the claim, invokes appropriate action under §2.2-4364, Code of Virginia or the administrative procedure authorized by §2.2-4365, Code of Virginia.

Upon request from the public body from whom the relief is sought, Contractor agrees to submit any and all contractual disputes arising from this Contract to VITA's alternative dispute resolution (ADR) procedures. Contractor may invoke VITA's ADR procedures at any time and concurrently with any other statutory remedies prescribed by the Code of Virginia.

In the event of any breach by VITA, Contractor's remedies shall be limited to claims for damages and Prompt Payment Act interest and, if available and warranted, equitable relief, all such claims to be processed pursuant to this Section. In no event shall Contractor's remedies include the right to terminate any license or support services hereunder.

Advertising and Use of Proprietary Marks

Contractor shall not use any Authorized User's name or refer to any Authorized User, directly or indirectly, in any press release or formal advertisement without receiving prior written consent of

such Authorized User. In no event may Contractor use a proprietary mark without receiving the prior written consent of the Authorized User.

Assignment

To the fullest extent permitted by law, the parties agree that Contractor's rights under this Contract shall not be assignable, in whole or in part, to any other party without the Virginia Information Technologies Agency's (VITA's) written consent, and that any purported assignment or transfer without such consent shall be null and void.

In the event VITA receives any notice from a third party claiming to be an assignee of any rights of the Contractor under this Contract, Contractor agrees that payment or other performance in respect of those rights shall not be due until at least thirty days after VITA's receipt of the notice required by the above paragraph or receipt of a similarly executed notice confirming the absence or revocation of the purported assignment. VITA's Supply Chain Management Division shall promptly notify the Contractor of any assignment notice it receives.

VITA may assign this Contract to any entity, so long as the assignee agrees in writing to be bound by the all the terms and conditions of this Contract.

Taxes—Federal, State, and Local

The Commonwealth of Virginia is exempt from Federal excise and all State and Local taxes. Such taxes shall not be included in Contract prices. Tax exemption certificates will be furnished if requested by the Contractor.

Severability

Invalidity of any term of this Contract, in whole or in part, shall not affect the validity of any other term. VITA and Contractor further agree that in the event such provision is an essential part of this Contract, they shall immediately begin negotiations for a suitable replacement provision.

Survival

The provisions of this Contract regarding Software License, Rights To Work Products, Warranty, Confidentiality, Liability and Indemnification, and the General Provisions shall survive the expiration or termination of this Contract.

Remedies

The remedies set forth in this Contract are intended to be cumulative. In addition to any specific remedy, VITA reserves any and all other remedies that may be available at law or in equity.

Right to Audit

All Contractual books, records and other documents related to matters under this Contract shall be made available by Contractor to the Commonwealth and its designated agents for a period of three (3) years after final payment for purposes of audit and examination.

Contractual records are hereby further defined as this Contract and all delivery/purchase orders, invoices or correspondence directly relating to this agreement.

Entire Contract

This Contract, the solicitation, bid response, solicitation instructions and all items specifically listed in the solicitation, and the notes in the solicitation constitute the entire agreement between the parties with respect to the subject matter of this Contract. All prior agreements, representations, negotiations and undertakings are hereby superseded with respect to Equipment and/or Services acquired by the Commonwealth under the terms and conditions of this Contract.

No other written documents regardless of form or content shall be executed by any agency or institution for equipment acquired under this Contract unless signed by the VITA authorized representative.

Please Populate Blue Shaded Regions

Proposed GPS Device from General Requirements, Sections 1 - 4

Item Description	Manufacture Part No.	Delivery Lead Time (in days ARO)	Index Price, Each	Discount from Index, Each	Trade-In Allowance allowed for 67 Mapping Grade CMT GPS Units (mixture of March IIE and MC-GPS units)	Initial Quantity Purchase of 100 Units	Net Price Offered to the Commonwealth (Total Evaluated Price)	Comments
GeoXM Standalone System	61000-50	30	2,595.00	10.00%	16,750.00	100.00	216,800.00	
Vehicle Power Adaptor	61235-00	30	95.00	10.00%	0.00	100.00	8,500.00	Please see comments in Optional Items tab.
GPS Pathfinder Office Software	34191-31	30	1,695.00	10.00%	0.00	1.00	1,525.00	Post-processing software is not required for each individual GPS unit. Only (1) copy of post-processing software (per office) is necessary.

Index Price List Location.
Provide URL here or
submit catalog with bid
response

Please see included price list

IFB 2007-2 Commonwealth of Virginia Invitation for Bid, Pricing Request
Attachment A - Pricing Submittal - Optional Items

Price List

Supplier Name:

Trimble Navigation, Ltd.

Submitted By:

Amber Kidwell

Please Populate Shaded Regions

Additional One-year Warranty for proposed hardware after expiration of manufacture's warranty or one-year warranty, whichever is greater (payment in arrears)

Cost Per Unit

\$211.00

quantity discount applied to additional warranty

% discount for payment in advance

\$0.00

Training Cost Per Day (Includes all travel and expenses) with no minimum purchase required

Training Cost Per Day

\$1,500.00

Proposed Additional Accessories Description	Manufacture Part No.	Delivery Lead Time (in days ARO)	Index Price, Each	Discount from Index	Net Price Offered to the Commonwealth, Each	Comments
GeoExplorer 2005 Series Power/Serial Clip	53550-00	30	95.00	10.00%	85.00	This item is necessary when utilizing the Vehicle Power Adaptor.
External Patch Antenna (1.5m cable)	40767-08	30	45.00	10.00%	40.00	External Antenna is recommended for vehicle applications.

If you are interested in providing the Commonwealth a mid-level GPS/PDA unit, (there is no guarantee in purchase levels for this item) please fill out the information below. Specifications must meet or exceed those specified in the General Requirements Sections 1 - 4 with the exception of the Minimum Horizontal Accuracy. This must be accurate to less than 1 meter. Also include accessory pricing for unit if desired.

Detailed Item Description for Mid-Level Unit	Manufacture Part No.	Delivery Lead Time (in days ARO)	Index Price, Each	Discount from Index	Net Price Offered to the Commonwealth, Each	Comments
GeoXT Standalone System	61000-20	30	4,295.00	10.00%	3,865.00	
GPS Pathfinder Office Software	34191-31	30	1,695.00	10.00%	1,525.00	
TerraSync Professional Software	45955-02	30	1,195.00	10.00%	1,075.00	

Additional One-year Warranty for Mid-Level hardware after expiration of manufacture's warranty or one-year warranty, whichever is greater (*payment in arrears*).

Cost Per Unit
\$292.00

% discount for payment in advance

\$0.00

If you are interested in providing the Commonwealth a high-level GPS/PDA unit, (there is no guarantee in purchase levels for this item) please fill out the information below. Specifications must meet or exceed those specified in the General Requirements Sections 1 - 4 with the exception of the Minimum Horizontal Accuracy. This must be accurate to less than 1 foot. Also include accessory pricing for unit if desired.

Detailed Item Description for High-Level Unit	Manufacture Part No.	Delivery Lead Time (in days ARO)	Index Price, Each	Discount from Index	Net Price Offered to the Commonwealth, Each	Comments
GeoXH Standalone System	61000-00	30	5,295.00	10.00%	4,765.00	
GPS Pathfinder Office Software	34191-31	30	1,695.00	10.00%	1,525.00	
TerraSync Professional Software	45955-02	30	1,195.00	10.00%	1,075.00	

Additional One-year Warranty for High-Level hardware after expiration of manufacture's warranty or one-year warranty, whichever is greater (*payment in arrears*).

Cost Per Unit
\$292.00
% discount for payment in advance \$0.00